

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B01-PLR-114558-02
Date:
June 27 2002

Legend:

X =

Y =

Date 1 =

Date 2 =

Date 3 =

State 1 =

State 2 =

Dear

This private letter ruling is in response to your request, dated February 18, 2002, on behalf of X, requesting relief under section 301.9100 of the Procedure and Administration Regulations to file an election to treat Y as a qualified subchapter S subsidiary (QSub) of X under section 1361(b)(3) of the Internal Revenue Code.

Facts

According to the information submitted, X was incorporated on Date 1 in State 1. X elected on Date 2 to be treated as an S corporation by filing Form 2553, Election by a Small Business Corporation.

On Date 3, X incorporated Y under the laws of State 2. Y is a wholly-owned subsidiary of X. X represents that it intended to elect to treat Y as a QSub, but inadvertently failed to timely make the election.

X represents that it has acted responsibly and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

Law and Analysis

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in section 1361(b)(2), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub. The election is made by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that the election will be effective on the date specified on the election form or on the date the election is filed if no date is specified. The effective date specified on the form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections, but does not apply to QSub elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Conclusions

Based solely on the facts submitted and the representations made, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat its wholly owned subsidiary, Y, as a QSub effective Date 3. X should submit the properly completed Form 8869 to the appropriate service center. A copy of this letter should be attached to the Form 8869 filed with the service

center.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether its subsidiary, Y, is a valid QSub.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this ruling will be sent to your representative.

Sincerely,
/s/ William P. O'Shea
William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: